

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2100

Introduced by Assembly Member Coto

February 18, 2010

An act to amend Sections 17276, 17276.9, 17276.10, 23101, 24416, 24416.9, 24416.10, 25120, and 25135 of, to repeal Sections 23663 and 25128.5 of, and to repeal and amend Section 25136 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2100, as amended, Coto. ~~Income taxation: deductions: net operating loss carrybacks: credits: eligible assignees: single sales factor. Taxation: sweetened beverages: Pediatric Obesity Fund.~~

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, on and after January 1, 2011, impose a tax at the rate of one cent (\$0.01) per teaspoon of added sweetener in the bottled sweetened beverage or concentrate upon every person who makes the first sale in this state of bottled sweetened beverage or concentrate and on every person who uses or consumes, or places into a vending machine or retail stock, untaxed bottled sweetened beverage or concentrate, as provided. This bill would exempt from the tax the first sale in this state of concentrate to a sweetened beverage manufacturer, as provided, and

any sale, use, or consumption which the state is prohibited from taxing, as provided. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refund and administrative costs, in the Pediatric Obesity Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the Department of Education for distribution of grants to eligible school districts for the purpose of employing a school nurse or health educator and creating a healthful diet and lifestyle plan for the school.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages and obesity.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

~~The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. Existing law allows a deduction for specified net operating losses, including allowing net operating loss carrybacks attributable to taxable years beginning on or after January 1, 2011.~~

~~This bill would disallow the use of net operating loss carrybacks by individual and corporate taxpayers.~~

~~The Corporation Tax Law authorize various credits against the taxes imposed by that law. Existing law provides, for taxable years beginning on or after July 1, 2008, that any credit that is an eligible credit, as~~

defined, may be assigned to any eligible assignees, as defined, that may be used by that eligible assignee for taxable years beginning on or after January 1, 2010.

This bill would repeal these provisions authorizing the assignation of credits and the use of those credits by eligible assignees.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. Existing law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided.

This bill would repeal the provisions that allow a taxpayer to have income apportioned in accordance with a single sale factor formula.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Over 64 percent of adults in the United States are overweight
- 4 and 17 percent of children and adolescents ages 2 to 19, inclusive,
- 5 are overweight. Overweight is a significant risk factor for the
- 6 development of diabetes. Twenty-three percent of children and
- 7 adults have diabetes and rates continue to explode.
- 8 (b) Currently, over 5.6 million adults in California, which equals
- 9 21.2 percent, are obese and an additional half million adolescents,
- 10 which equals 14.2 percent, are overweight or obese. The costs of

1 *physical inactivity, obesity, and overweight costs California*
2 *residents over \$28 billion per year.*

3 *(c) An average 12 ounce serving of soda contains 10 teaspoons*
4 *of sugar, whereas the United States Department of Agriculture*
5 *recommends that a person eating a 2,200 calorie diet should*
6 *consume no more than 12 teaspoons of refined sugar per day.*

7 *(d) There is an overwhelming link between obesity and the*
8 *consumption of sweetened beverages. The average American*
9 *consumes 278 additional calories than they did in 1977. One*
10 *hundred twenty of these calories can be attributed to sugar*
11 *sweetened beverages.*

12 *(e) Adam Smith, in 1776, declared “Sugar, rum and tobacco*
13 *are commodities which are nowhere necessities of life, which are*
14 *become objects of almost universal consumption, and which are*
15 *therefore extremely proper subjects of taxation.”*

16 *SEC. 2. Part 14.5 (commencing with Section 32600) is added*
17 *to Division 2 of the Revenue and Taxation Code, to read:*

18
19 **PART 14.5. SWEETENED BEVERAGE TAX LAW**

20
21 *32600. This part shall be known and may be cited as the*
22 *Sweetened Beverage Tax Law.*

23 *32601. For purposes of this part:*

24 *(a) “Added sweetener” means any additive that enhances the*
25 *sweetness of a beverage, including, but not limited to, added sugar;*
26 *but does not include the natural sugar or sugars that are contained*
27 *within the fruit juice that is a component of the beverage.*

28 *(b) “Beverage container” means any closed or sealed glass,*
29 *metal, paper, plastic, or any other type of container regardless of*
30 *the size or shape of the container.*

31 *(c) “Bottled sweetened beverage” means a sweetened beverage*
32 *contained in a beverage container.*

33 *(d) “Concentrate” means a sweetened beverage syrup, simple*
34 *syrup, powder, or base product for mixing, compounding, or*
35 *making sweetened beverages.*

36 *(e) “Concentrate manufacturer” means any person that*
37 *manufactures concentrate for sale to distributors, dealers,*
38 *consumers, or others in this state.*

39 *(f) “Milk” means natural liquid milk, regardless of animal*
40 *source or butterfat content, natural milk concentrate, whether or*

1 *not reconstituted, regardless of animal source or butterfat content,*
2 *or dehydrated natural milk, whether or not reconstituted.*

3 (g) *“Natural fruit juice” means the original liquid resulting*
4 *from the pressing of fruit, the liquid resulting from the*
5 *reconstitution of natural fruit juice concentrate, or the liquid*
6 *resulting from the restoration of water to dehydrated natural fruit*
7 *juice.*

8 (h) *“Natural vegetable juice” means the original liquid resulting*
9 *from the pressing of vegetables, the liquid resulting from the*
10 *reconstitution of natural vegetable juice concentrate, or the liquid*
11 *resulting from the restoration of water to dehydrated natural*
12 *vegetable juice.*

13 (i) *“Nonalcoholic beverage” means all beverages not subject*
14 *to tax under Part 14 (commencing with Section 32001).*

15 (j) (1) *“Powder” or “base product” means a mixture of*
16 *ingredients in other than liquid form, used in making, mixing, or*
17 *compounding sweetened beverages by mixing this product with*
18 *water, ice, syrup, or simple syrup, fruits, vegetables, fruit juice,*
19 *vegetable juice, or any other product suitable to make a sweetened*
20 *beverage.*

21 (2) *“Powder” or “base product” does not include any of the*
22 *following:*

23 (A) *Any product sold in powder or other nonliquid mixture form*
24 *that is solely used in preparing coffee or tea.*

25 (B) *Any product sold in powder form for consumption by infants*
26 *and which is commonly referred to as “infant formula.”*

27 (C) *Any product sold in powder form for use for weight*
28 *reduction.*

29 (D) *Any product containing milk or milk products.*

30 (E) *Any frozen concentrate or freeze-dried concentrate to which*
31 *only water is added to produce a sweetened beverage containing*
32 *more than 10 percent natural fruit juice or more than 10 percent*
33 *natural vegetable juice.*

34 (F) *Any powder or other base product that is sold and used for*
35 *the purpose of an individual consumer mixing a sweetened*
36 *beverage.*

37 (k) *“Sale” means the transfer of title or possession for*
38 *consideration in any manner or by any means whatever.*

39 (l) *“Simple syrup” means a mixture of sugar and water.*

(m) (1) “Sweetened beverage” means any sweetened nonalcoholic beverage sold for human consumption including, but not limited to, the following: soda water, ginger ale, root beer, all beverages commonly referred to as cola, lime, lemon, lemon-lime, and other flavored beverages, including any fruit or vegetable beverage containing 10 percent or less natural fruit juice or natural vegetable juice, and all other drinks and beverages commonly referred to as “soda,” “soda pop,” and “soft drinks.”

(2) “Sweetened beverage” does not include any of the following:

(A) Any nonalcoholic beverage sweetened entirely with artificial sweeteners that do not add calories to the beverage.

(B) Any product sold in liquid form for consumption by infants, which is commonly referred to as “infant formula.”

(C) Any product sold in liquid form for use for weight reduction.

(D) Water, to which no natural sweeteners have been added.

(E) Any product containing milk or milk products.

(n) “Sweetened beverage manufacturer” means any person who bottles, cans, or otherwise fills a bottled sweetened beverage.

(o) “Syrup” means the liquid mixture of ingredients used in making, or mixing, compounding sweetened beverages by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a sweetened beverage.

(p) “Teaspoon” means 4.2 grams.

32602. (a) A tax is hereby imposed at the rate of one cent (\$0.01) per teaspoon of added sweetener in a bottled sweetened beverage on every person who does the following:

(1) Makes the first sale in this state of a bottled sweetened beverage.

(2) Uses or consumes an untaxed bottled sweetened beverage in this state.

(3) Places in this state an untaxed bottled sweetened beverage in a vending machine or in retail stock for the purpose of selling the bottled sweetened beverage to consumers.

(b) A tax is hereby imposed at the rate of one cent (\$0.01) per teaspoon of added sweetener in the concentrate on every person who does the following:

(1) Makes the first sale in this state of concentrate.

(2) Uses or consumes untaxed concentrate in this state.

1 (3) *Places in this state untaxed concentrate in a vending machine*
2 *or retail stock for the purpose of selling a sweetened beverage to*
3 *consumers.*

4 (c) *There is exempt from the tax imposed under subdivision (b),*
5 *the sale of untaxed concentrate to a sweetened beverage*
6 *manufacturer, whose sale of the concentrate or the bottled*
7 *sweetened concentrate is subject to tax under subdivision (a) or*
8 *(b).*

9 32603. *There is exempt from the tax imposed by this part, the*
10 *sale, use, or consumption in this state of bottled sweetened*
11 *beverage or concentrate where the state is prohibited from taxing*
12 *that sale, use, or consumption under the Constitution or laws of*
13 *the United States or under the Constitution of this state.*

14 32604. *The board shall administer and collect the tax imposed*
15 *by this part pursuant to the Fee Collection Procedures Law (Part*
16 *30 (commencing with Section 55001)). For purposes of this part,*
17 *the references in the Fee Collection Procedures Law to “fee” shall*
18 *include the tax imposed by this part and references to “feepayer”*
19 *shall include a person required to pay the tax imposed by this part.*

20 32605. *Each person required to pay the tax shall prepare and*
21 *file with the board a return in the form prescribed by the board*
22 *containing information as the board deems necessary or*
23 *appropriate for the proper administration of this part. The return*
24 *shall be filed on or before the last day of the calendar month*
25 *following the calendar quarter to which it relates, together with*
26 *a remittance payable to the board for the amount of tax due for*
27 *that period.*

28 32606. *The board may prescribe those forms and reporting*
29 *requirements as are necessary to implement the tax, including, but*
30 *not limited to, information regarding the total amount of added*
31 *sweetener, the total amount of bottled sweetened beverage drinks*
32 *sold, and the amount of tax due.*

33 32607. *Every payment on a delinquent tax owed pursuant to*
34 *this part shall be applied as follows:*

35 (a) *First, to any interest due on the tax.*

36 (b) *Second, to any penalty imposed by this part.*

37 (c) *Third, the balance, if any, to the tax due.*

38 32608. *The board shall, upon appropriation, be reimbursed*
39 *for expenses incurred in the administration and collection of the*
40 *tax imposed by this part.*

1 32609. (a) *There is hereby created a fund in the State Treasury*
2 *called the Pediatric Obesity Fund. The Pediatric Obesity Fund*
3 *shall consist of all taxes, interest, penalties, and other amounts*
4 *collected pursuant to this part, less refunds and reimbursement to*
5 *the board for expenses incurred in the administration and*
6 *collection of the tax.*

7 (b) *All moneys in the Pediatric Obesity Fund shall, upon*
8 *appropriation by the Legislature, be allocated to the Department*
9 *of Education for distribution of grants to eligible school districts*
10 *for the purpose of employing a school nurse or health educator*
11 *and creating a healthful diet and lifestyle plan for the school.*

12 SEC. 3. *No reimbursement is required by this act pursuant to*
13 *Section 6 of Article XIII B of the California Constitution because*
14 *the only costs that may be incurred by a local agency or school*
15 *district will be incurred because this act creates a new crime or*
16 *infraction, eliminates a crime or infraction, or changes the penalty*
17 *for a crime or infraction, within the meaning of Section 17556 of*
18 *the Government Code, or changes the definition of a crime within*
19 *the meaning of Section 6 of Article XIII B of the California*
20 *Constitution.*

21 SEC. 4. *This act provides for a tax levy within the meaning of*
22 *Article IV of the Constitution and shall go into immediate effect.*
23 *However, the provisions of this act shall become operative on*
24 *January 1, 2011.*

25
26
27 **All matter omitted in this version of the bill**
28 **appears in the bill as introduced in the**
29 **Assembly February 18, 2010. (JR11)**
30